

# **EXHIBIT E**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NIKE, INC.,

Plaintiff,

vs.

CASE NO. 1:22-CV-00983-VEC

STOCKX LLC,

Defendant.

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VIDEOTAPED DEPOSITION OF ITAMAR SIMONSON, Ph.D  
San Francisco, California  
Tuesday, July 25, 2023

Stenographically Reported by: Ashley Soevyn,

CSR No. 12019

Job No. 6001088

Pages 1 - 284

1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

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5 NIKE, INC.,

6 Plaintiff,

7 vs.

CASE NO. 1:22-CV-00983-VEC

8 STOCKX LLC,

9 Defendant.

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15 Videotaped Deposition of  
16 ITAMAR SIMONSON, PH.D., taken on behalf of the  
17 Defendant StockX, LLC,, Pursuant to Notice, at the  
18 offices of Debevoise & Plimpton, 650 California  
19 Street, San Francisco, California beginning at  
20 9:07 a.m. and ending at 5:10 p.m. on Tuesday, July  
21 25, 2023, before me, ASHLEY SOEVYN, Certified  
22 Shorthand Reporter No. 12019.  
23  
24  
25

1 A P P E A R A N C E S:

2 FOR THE PLAINTIFF NIKE INC.:

3 DLA PIPER

4 BY: TAMAR Y. DUVDEVANI

5 BY: MARC E. MILLER

6 Attorneys at Law

7 1251 Avenue of the Americas, 27th Floor

8 New York, New York 10020

9 tamar.duvdevani@dlapiper.com

10 marc.miller@dlapiper.com

11 (212) 335-4500

12

13 FOR THE DEFENDANT STOCKX LLC:

14 DEBEVOISE & PLIMPTON, LLP

15 BY: CHRISTOPHER S. FORD

16 Attorney at Law

17 650 California Street

18 San Francisco, California 94108

19 csford@debevoise.com

20 (415) 738-5705

21 Also Present:

22 Abigail Liles, law clerk, Debevoise & Plimpton

23 Chester Dubov, summer associate, Debevoise &

24 Plimpton

25 Peter Yaroshuk, Videographer

1 names."

2 I'm not sure that captures everything,  
3 but that's one definition.

4 Q Are there other aspects to the definition  
5 of a brand extension that aren't included in that  
6 paragraph 7?

7 MS. DUVDEVANI: Objection.

8 THE WITNESS: You know, there -- you --  
9 you open a marketing textbook, you open a branding  
10 textbook, you'll find different definitions. I  
11 don't think there is one -- one definition that  
12 everyone agrees on.

13 BY MR. FORD:

14 Q And your opinion is that the Vault NFTs  
15 in this case constituted a brand extension of the  
16 Nike brand; is that right?

17 A Yes. As far as Nike is concerned. It  
18 might have been brand extension for other brands as  
19 well.

20 Q Is whether the Vault NFTs are or are not  
21 a brand extension relevant to consumers' likelihood  
22 of confusion in this case?

23 A I don't -- I haven't thought about that.  
24 I don't know that it is.

25 Q In addition in your first rebuttal

1 report, you mention risk of harm. For example, in  
2 paragraph 11, right?

3 A Right.

4 Q You write:

5 (As read):

6 "StockX's unauthorized use of Nike's  
7 brand to experiment with a new product  
8 category presented exactly such a risk  
9 of unarmed harm to Nike's brand and its  
10 good will."

11 Correct?

12 A Right.

13 Q In this report or otherwise, do you have  
14 any other evidence that there was, in fact, harm to  
15 Nike as a result of StockX's Vault NFTs?

16 A I was --

17 MS. DUVDEVANI: Objection.

18 THE WITNESS: Yeah. I -- I was not asked  
19 to opine to quantify any damages to Nike.

20 Having said that, the mere fact that Nike  
21 is losing control of its brand, that's harm. At  
22 least, potential harm. Let's -- and it's not --  
23 it's easy -- let me put it this way: It's easy to  
24 think about scenarios whereby Nike's brand would  
25 be -- would have been damaged -- and again, I'm not

1 opining on specific damages -- we're talking about a  
2 new category and new idea that StockX came up with.

3 And we know that initially, the prices  
4 that people paid for those shoes, Nike shoes, were  
5 extremely high. Now, suppose that a customer  
6 purchased an overpriced, let's call it Nike shoe,  
7 and that -- that person has a press conference and  
8 nowadays with social media, it's very easy to say,  
9 "I trusted Nike, and I was willing to go along with  
10 this seemingly attractive offer of StockX to invest  
11 in Nike -- in a NFT tied to a Nike shoe because I'm  
12 a great believer in Nike. It turns out I lost  
13 \$5,000," or whatever.

14 I don't think it's the kind of  
15 association that Nike would like to have.

16 BY MR. FORD:

17 Q Does Nike have the right to set prices  
18 for its shoes on the secondary market?

19 MS. DUVDEVANI: Objection.

20 THE WITNESS: I -- I don't think so.

21 BY MR. FORD:

22 Q So you're not offering an opinion on  
23 whether there was, in fact, actual harm to Nike in  
24 this case, correct?

25 A As I said, I'm not the damages person

1 here. Didn't quantify, didn't offer. I'm saying  
2 the mere fact that you lose control over your brand,  
3 especially in the context of such a risky novel  
4 category, where the rules are not set yet, and hard  
5 to predict what will happen. We know that NFTs have  
6 been on the decline. They may go back up. So there  
7 is real risk here. And if -- if I'm the brand  
8 owner, I don't want to be at the mercy of someone  
9 else who is using my product in the context of this  
10 novel, perhaps untested, business idea.

11 Q You call this a novel business idea. But  
12 elsewhere in your first rebuttal report -- I believe  
13 it's your first rebuttal report. Yes.

14 Paragraph 6 on page 2, you note that Nike  
15 had also entered the NFT space, correct?

16 A Yes.

17 Q And so it's your understanding that Nike  
18 also sells NFTs to consumers?

19 A Yes. Nike decided for itself to sell  
20 sneakers as NFT. Obviously, Nike does not need to  
21 make a big deal out of authenti -- authentication,  
22 given it is the -- the company that makes those  
23 shoes, and they can -- if they say 100 percent  
24 authentic, they can -- they can say it with  
25 100 percent certainty.



1 of confusion?

2 A It's confusion. The -- the relevant  
3 measure of confusion in the context of this case.  
4 As I explained earlier, we talked about the fact  
5 that in this somewhat unusual case, we have both the  
6 junior mark, StockX, and the senior mark, Nike on  
7 the same page. Both in the test and the control,  
8 they appear in every page. It's unusual. And that  
9 is the -- the -- if you will, just -- if you --  
10 that -- that's a big component of the confusion  
11 here. But I think the impact of the prominence on  
12 the mistaken belief that the offer is made by Nike  
13 is another component of confusion.

14 Q Are you offering an opinion in this case  
15 as to whether StockX's Vault NFTs are likely to  
16 cause confusion with Nike?

17 A I -- yeah, I do offer the opinion that  
18 the StockX NFT causes -- likely and does create  
19 confusion with Nike as to the belief that Nike makes  
20 the offer.

21 Q And that opinion is based on the surveys  
22 that you fielded in this case; is that right?

23 A Yes. And I think it was replicated,  
24 especially by Dr. Neal. So he got -- if you look  
25 at -- while, you know, I understand that he -- he

1 opportunity to see the image, that's what you do. I  
2 thought that was a good way of -- of doing it. And  
3 I don't -- can't think of any re -- any bias or any  
4 issue that would arise because the respondents in  
5 both groups, the test and control, in both surveys,  
6 were shown a markup-like product line. Nothing.

7 Yeah, it was not something that  
8 respondents saw in reality. But if someone can tell  
9 me, "Okay, here is how it affected results," sure,  
10 let's look at the results.

11 Q And -- and --

12 A I don't think there is any -- I -- I  
13 looked at the reports of Klein and -- and Neal, and  
14 they tried to make something out of that, especially  
15 Neal, I think. But I forget now which fatal flaw  
16 number it was. But out there somewhere between --

17 Q One and nine.

18 A -- between one -- one and nine, they  
19 said, "Ah, well, it's not a reality." Okay. How  
20 did that affect the results? Did it affect the  
21 likelihood that people would say -- would be more  
22 likely to say Nike versus StockX just because I  
23 showed a lineup of products sold on StockX?

24 It would -- if you look at the title:

25 (As read):

1 and were part of the data that you relied on in this  
2 opinion -- or in your opinion did not select  
3 number 2, investing in NFT?

4 A I -- I don't recall.

5 Q So you -- you represented that you  
6 reviewed Dr. Neal's expert report in this case --  
7 right? -- his rebuttal expert report.

8 A I did.

9 Q And do you recall that Dr. Neal  
10 calculated, based on your data, that 52.2 percent of  
11 your respondents did not select number 2?

12 A Yes.

13 Q Do you have any reason to disagree or  
14 contest Dr. Neal's findings there?

15 A No.

16 Q Okay. You didn't ask your respondents  
17 anything specific to buying collectible sneakers in  
18 particular, correct?

19 MS. DUVDEVANI: Objection.

20 THE WITNESS: I -- I did not --

21 BY MR. FORD:

22 Q Let -- let me withdraw, and I'll ask the  
23 question a different way.

24 Based on your screening questions, are  
25 you able to determine whether any of your survey

1 respondents was specifically interested in buying  
2 collectible sneakers?

3 A Not -- not with the certainty. As I  
4 said, I'm looking for all kinds of indicators that  
5 make it more likely. And I explain in my reports  
6 why defining it narrowly based on purchases of NFTs  
7 tied to sneakers was a mistake. And you -- I'm sure  
8 you read all the problems that arose.

9 And I did not even talk about the fact  
10 that I think Dr. Neal found extremely high  
11 percentage of people who said that they purchased  
12 NFT and that they collect sneakers. I mean, in any  
13 case -- and -- and the fact that he, in his survey,  
14 I think, something like 7 percent said that they  
15 either purchased NFTs linked to sneakers or expect  
16 to. So if -- if I'm 7 percent, yet he's concerned  
17 about the fact that, in my survey, 52 percent said  
18 they didn't -- I mean, I -- anyway. It's going  
19 beyond your question.

20 But, yeah. That's -- that's -- you're  
21 right. You -- it's not easy to define here the  
22 exact universe. And I think, as I explained in my  
23 reports, realistically, consumers even who are  
24 inclined to start collecting sneakers or invest in  
25 something like these NFTs, they might know right

1 BY MR. FORD:

2 Q Okay. The -- your conclusion that the  
3 data here was not -- just going to make sure  
4 "informative" was the word that you used. Did you  
5 reach that conclusion before looking at the  
6 responses that your respondents gave?

7 A Yes.

8 Q Did you, in fact, look at any of the  
9 responses that your respondents gave?

10 A I -- I don't recall specifically that --  
11 I -- I -- I probably did. But I -- I don't remember  
12 exactly what I looked at and whether any conclusions  
13 or any findings seemed relevant.

14 Q Did reviewing the data in any way affect  
15 the opinions that you're offering in this case?

16 A Absolutely not.

17 Q Great.

18 Who coded your data?

19 A There -- there is a firm working with  
20 Target Research Group. These are people who  
21 specialize in coding. And they are blind to both  
22 the purpose of the survey and the identity of its  
23 sponsor. They just look at the responses and code  
24 the verbatims.

25 Q Did you personally review their coding?

## \*\*\* ERRATA SHEET \*\*\*

CASE: NIKE V. STOCKX

DATE OF DEPOSITION: JULY 25, 2023

WITNESS: ITAMAR SIMONSON

PAGE	LINE	FROM	TO	REASON
17	16	that	that it's	TE
18	13	ever-ready	Eveready	"
19	4	say	saying	TE
20	9	question	shoe	Accuracy
22	22	shoe	product	Accuracy
23	9	that the	the	TE
26	15	he	she	"
33	15	from	for	"
38	3	Resell	Resale	"
42	4-5	those shoes, Nike shoes, were extremely high	those NFTs tied to shoes, Nike shoes, were extremely high.	Accuracy
44	3	artifact	RTFKT	TE
46	16	can	can't	"
47	5	be the vaulting club	that be, the vaulting club?	"
52	6	to	to the	"
54	7	than as	as	"
57	7	Only	Only?	"
57	21	I'm	I'm also	"
63	8	appears	appear	"
66	3	Heinz	Hunt's	"
66	4	companies	company	"
67	1	the	a	"

<b>PAGE</b>	<b>LINE</b>	<b>FROM</b>	<b>TO</b>	<b>REASON</b>
67	4	what I just	or	“
70	15	Nike	Stockx	“
84	13	the position	deposition	“
85	17	South and	South	“
90	18	is	if	“
92	25	questions, when	questions when	“
94	5	to	them to	“
95	6	markup-like	mock-up	“
101	23	double	Nobel	“
103	13	expended	expanded	“
112	6	product	products	“
113	23	want	wanted	“
114	2	focus	focus on	“
115	19	products	products	“
124	14	their	the	“
141	11	you call it infringement	what you call infringement	“
147	2	made	showed	“
152	12	have used	use	“
164	3	with the	with	“
164	16	I’m	it’s	“
164	23	who	those who	“
164	125	know	not know	“
166	15	options	auctions	“
170	15	hooka	Hoka	“
172	24	is as	as	“
173	1	comparative	compared	“
181	13	have	had	“
183	21	generic	general	“

PAGE	LINE	FROM	TO	REASON
202	10	that	is that	“
206	21	ranked orders,	rank ordered	“
211	25	criteria”?	criterion”?	“
212	20	criteria	criterion	“
213	6	in	on	“
213	6	criteria	criterion	“
216	15	there’s	they’re	“
226	21	futures	future	“
231	25	certainty	uncertainty	“
243	16	if there others	if others	“
246	1	deals	deal	“
248	3	go from as	go as	“
260	10	“Mary Kay”	“Mary Kay” in	“
260	17	of issue	an issue	“
262	23	it’s a	it’s	“
270	1	that that	that	“
274	4	Wall v.	moldy	“
275	22	or	about	“
278	1	in court	in part	“

\* TE – Transcription error

I attest that all of the above is true.

Date: 8/21/2023



Itamar Simonson, Ph.D.